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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,674	12/31/2003	Douglas R. WARE	05233.0009.NPUS01	1673
28694	7590	06/23/2006	EXAMINER	
NOVAK DRUCE & QUIGG, LLP 1300 EYE STREET NW 400 EAST TOWER WASHINGTON, DC 20005			LILLING, HERBERT J	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/707,674

Applicant(s)

WARE ET AL.

Examiner

HERBERT J. LILLING

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-41 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. Claims 1-41 are present in this application.
2. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-15, drawn to a **first method** for reducing the pathogen content of a meat product, the method comprising contacting the meat product with at least one lactic acid producing microorganism, wherein the meat product is unprocessed meat, fish, shellfish, or a processed meat material, classified in class 424, subclass 93.45.
- II. Claim 16-29, drawn to a **second method** for reducing the pathogen content of meat or a meat product, the method comprising: selecting an animal carcass; contacting the animal carcass with at least one lactic acid producing microorganism; and processing the animal carcass to produce meat or a meat product, classified in class 424, subclass 93.45.
- III. Claims 30-40, drawn to a **third method** for reducing the pathogen content of meat or a meat product, the method comprising: selecting an animal feedstock; contacting the animal feedstock with at least one lactic acid producing microorganism to produce a treated feedstock; providing the treated feedstock to an animal; obtaining the animal carcass from the animal; and processing the animal carcass to produce meat or a meat product, classified in class 424, subclass 93.45.
- IV. Claim 41, drawn to a **fourth method** for reducing the pathogen content of meat or a meat product, the method comprising: selecting an animal;

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administering at least one lactic acid producing microorganism to the animal to obtain a treated animal; obtaining the animal carcass from the treated animal; and processing the animal carcass to produce meat or a meat product, classified in class 424, subclass 93.45.

3. Each of the above method involve different steps from each other which these inventions are independent or distinct because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper. The search and examination is extremely burdensome in view of the variations for the above inventions, which includes different products and different microorganisms. The search is considered also extremely burdensome since the computer search strategies are different for each of the inventions. The search and examination of these multiple inventions would be a very serious hindrance in helping the U.S. Patent Office to reduce pendency and meeting the goals for Congress.

4. This application contains claims directed to the following patentably distinct species:

A. Whereby the pathogen is selected from:

a. E. coli pathogen:

aa. E. coli O157:H7

ab. Other – please specify species.

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b. Staphylococcus pathogen:

ba. Staphylococcus aureus,

bb. Other-please specify species.

c. Salmonella pathogen:

ca. Salmonella typhirium, wherein the meat product is
unprocessed meat, fish, shellfish, or a processed meat material.

cb. Other please specify species.

X. Whereby the meat product is :

a. unprocessed :

aa. meat,

a. beef meat,

b. pig meat,

c. chicken meat,

d. turkey meat,

e. lamb meat,

f. deer meat,

g. buffalo meat,

h. alligator meat,

or

i. snake meat.

ab. Whereby the fish is selected from:

- a. salmon,
- b. catfish,
- c. trout,
- d. flounder,
- e. haddock,
- f. cod,
- g. mackerel,
- h. tuna,
- i. swordfish,
- j. shark,
- or
- k. squid.

ac. Whereby the shellfish is selected from:

- a. clam,
- b. scallop,
- c. mussel,
- d. oyster,
- e. abalone,
- f. lobster,

g. shrimp,

h. crab,

or

i. crayfish.

or

b. whereby the processed meat material is selected from:

a. ground beef,

b. ground turkey,

c. ground chicken,

d. beef sausage,

e. pork sausage,

f. chicken sausage,

g. hot dogs,

or

h. bologna.

B. Whereby the wherein the lactic acid producing microorganism comprises:

1. Bacillus microorganism,

2. Bifidobacterium microorganism,

3. Lactobacillus microorganism,

4. Pediococcus microorganism,

or

5. Streptococcus microorganism.

C. Whereby the process or composition comprises:

a. one lactic acid producing microorganism selected from :

1. Bacillus microorganism,
2. Bifidobacterium microorganism,
3. Lactobacillus microorganism,

3a: wherein the lactic acid producing
microorganism comprises :

i. Lactobacillus acidophilus

microorganism selected from the group
consisting of:

- ia. M35,
- ib. LA45,
- ic. LA51,
- id. L411,
- ie. NPC 747,
- if. NPC 750,
- ig. D3

4. Pediococcus microorganism,

or

5. Streptococcus microorganism;

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or;

b. two or more lactic acid producing microorganisms selected from the following –please specify the mixture:

1. Bacillus microorganism,
2. Bifidobacterium microorganism,
3. Lactobacillus microorganism3a: wherein the lactic acid producing microorganism comprises :

i. Lactobacillus acidophilus

microorganism selected from the group consisting of:

- ia. M35,
- ib. LA45,
- ic. LA51,
- id. L411,
- ie. NPC 747,
- if. NPC 750,

or

ig. D3.

4. Pediococcus microorganism,
- or
5. Streptococcus microorganism.

5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 16, 30 and 41 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added.

An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. **If claims are added after the election, applicant must indicate which are readable upon the elected species.**

MPEP § 809.02(a).

6. Applicant is advised that the reply to this requirement to be complete must include:

(i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143)

and

(ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).


8. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is 571-272-0918 and Fax Number is (703) 872-9306** or SPE Michael Wityshyn whose telephone number is 571-272-0926. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.J.Lilling: HJL
(571) 272-0918
Art Unit **1651**
June 19, 2006


Dr. Herbert J. Lilling
Primary Examiner
Group 1600 Art Unit 1651